

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

YUMA M. CLARKE,)	
)	
Petitioner,)	
)	
v.)	1:15CV478
)	
FRANK L. PERRY,)	
)	
Respondent.)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a prisoner of the State of North Carolina, submitted a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. For the following reasons, the Petition cannot be further processed.

1. The filing fee was not received, nor was an affidavit to proceed *in forma pauperis* submitted and signed by Petitioner.
2. Petitioner has not used the required § 2254 Forms. Rule 2, R. Gov. § 2254 Cases. The Clerk will forward to Petitioner the proper forms.

Because of these pleading failures, the Petition should be filed and then dismissed, without prejudice to Petitioner filing a new petition on the proper habeas corpus forms with the \$5.00 filing fee, or a completed application to proceed *in forma pauperis*, and otherwise correcting the defects noted. To further aid Petitioner, the Clerk is instructed to

send Petitioner a new application to proceed *in forma pauperis*, new § 2254 forms, and instructions for filing a § 2254 petition, which Petitioner should follow.

Petitioner also filed a Motion [Doc. #2] seeking to hold the case in abeyance while he exhausts his state court remedies as to his claims. This Motion will be denied. Petitioner provides no reason to hold the case in abeyance. He does not explain why he filed in this Court prior to exhausting his state court remedies. Also, his claims appear more than a decade old, meaning that they are very likely time-barred even at this point. Staying the case would not appear to affect the timeliness of the claims. To the extent that Petitioner believes his claims are timely, he can litigate that in any refiling after exhausting his state court remedies.

In forma pauperis status will be granted for the sole purpose of entering this Order and Recommendation.

IT IS THEREFORE ORDERED that *in forma pauperis* status is granted for the sole purpose of entering this Order and Recommendation. The Clerk is instructed to send Petitioner § 2254 forms, instructions, and a current application to proceed *in forma pauperis*.

IT IS FURTHER ORDERED that Petitioner's Motion to Hold in Abeyance [Doc. #2] is DENIED.

IT IS RECOMMENDED that this action be filed, but then dismissed *sua sponte* without prejudice to Petitioner filing a new petition which corrects the defects of the current Petition.

This, the 16th day of September, 2015.

/s/ Joi Elizabeth Peake
United States Magistrate Judge